ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF ERRORS OF CONNECTICUT.[2]
SUPREME COURT OF ILLINOIS.[3]
SUPREME COURT OF OHIO.[4]
SUPREME COURT OF WISCONSIN.[5]

ACCORD AND SATISFACTION.

Payment of Money—Additional Consideration.—While it is a general rule that the payment in money of a less sum than an entire liquidated debt, though agreed by the creditor to be in full of the debt, is not a good accord and satisfaction, yet the rule will not be applied where any other consideration for the creditor's agreement, even though slight, can be found: *Mitchell* v. *Wheaton*, 46 Conn.

A creditor had brought suit upon a liquidated debt of $299, and while it was pending agreed to accept of the debtor $150 in full of the debt, the debtor also to pay the costs and expenses of the suit when ascertained. The debtor paid the $150, and afterwards the amount of the costs and expenses, which was found to be $18. *Held*, that this last payment made a sufficient additional consideration for the creditor's agreement, and that the transaction was a good accord and satisfaction: *Id.*

ADVANCEMENT. See *Mortgage.*

AMENDMENT. See *Lien.*

BILL OF EXCEPTIONS.

Error in Charge of Court—Failure to state Evidence in Bill.—Where complaint is made of the charge of the court, the bill must contain a distinct statement of the testimony given or offered which raises the question to which the charge applied. An omission to do this is not cured by the fact that in the charge the court assumed that the evidence had been given: *Worthington* v. *Mason*, S. C. U. S., Oct. Term 1879.

CHATTEL MORTGAGE. See *Surety.*

CONTRACT. See *Covenant; Specific Performance.*

Variance of Sealed Contract by Parol.—Notwithstanding what was said in some of the old cases, it is now recognised doctrine that the terms of a contract under seal may be varied by a subsequent parol agreement. Certainly whatever may have been the rule at law such is the rule in equity: *Chesapeake & Ohio Canal Co*, v. *Ray*, S. C. U. S., Oct. Term 1879.

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[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1879. The cases will probably be reported in 10 or 11 Otto.

[2] From John Hooker, Esq., Reporter; to appear in 46 Conn. Reports.

[3] From Hon. N. L. Freeman, Reporter; to appear in 90 Ills. Reports.

[4] From E. L. De Witt, Esq., Reporter; to appear in 35 Ohio St. Reports.

[5] From Hon. O. M. Conover, Reporter; to appear in 48 Wis. Reports.

CORPORATION.

Officers—Statute imposing Liability for Debts in case of Neglect of Duties—Construction of—Liability of Officer not affected by Informality in Election.—A statute of Connecticut required the president and secretary of every joint stock company to file with the town clerk annually, on or before the 15th of February or of August, a certificate of the affairs of the company, and in case of an intentional neglect of such officer to perform such duty he was made liable to an action for all debts of the corporation contracted during the period of such neglect. In an action against the president for a debt of the corporation, *Held*, that this statute was penal and should be strictly construed. *Held further*, that one elected and serving as president might incur the statute liability notwithstanding an informality in his election. *Held further*, that one elected president in June was under no legal obligation to file a certificate until the 15th of the following August, although no certificate had been filed by his predecessor since June of the previous year, and hence he was not personally liable for merchandise ordered before his election and delivered after his election, but before August 15th: *Providence Steam Engine Co.* v. *Hubbard*, S. C. U. S., Oct. Term 1879.

COVENANT.

To Support Grantor in Consideration of Conveyance—Not Assignable and does not run with the Land—On Failure of Consideration Equity will Cancel Deed—Putting Plaintiff on Terms in Equity.—In 1875 plaintiffs, a married couple, old and infirm, conveyed the homestead farm to their daughter C., on the sole consideration that she should support and maintain them during the remainder of their natural lives; and at the same time the daughter executed to her father an instrument, called in the complaint a "lease of said lands to hold the same during his lifetime" and that of his wife, with a covenant to support them during their lives in a comfortable manner, and a provision empowering them, or either of them, upon breach of such covenant, to take possession of the premises and hold them for their support and maintenance. A few months afterwards the daughter died; since that time plaintiffs have supported themselves; all the children and heirs at law of C., except one, are non-residents of this state, and "do not desire to carry out" C.'s agreement with plaintiffs, and that one is not of sufficient ability to do so. *Held*, that C.'s covenant was not assignable nor binding upon her heirs; and equity at plaintiff's suit will cancel the conveyance to C.: *Bishop* v. *Aldrich*, 48 Wis.

It seems, that if, between the date of such conveyance and C.'s death, she expended for plaintiffs' support more than she received from them, the court may make her personal representative a party to the action, ascertain the amount, and require payment thereof as a condition of relief: *Id.*

CRIMINAL LAW.

Abduction.—Under the statute making it an offence punishable in the penitentiary, to entice or take away an unmarried female of a chaste life and conversation from her parents' house, or wherever she may be found, for the purpose of prostitution or concubinage, or to assist in such abduction, it is sufficient to constitute the crime that a girl living with her

parents is induced, by persuasion or enticements to go to some convevenient place from her father's house, in the immediate neighborhood, for the purpose of prostitution, where she is gone only an hour or two at a time, she continuing to dwell with her parents all the time: *Slocum* v. *The People*, 90 Ill.

Conspiracy.—In order to sustain a conviction for a conspiracy, the object of the conspiracy must be proved as laid in the indictment, and there must be more than one person shown to be guilty. It needs something more than proof of a mere passive cognisance of fraudulent or illegal action of others to show a conspiracy. There must be something showing active participation of some kind by the parties charged: *Evans* v. *The People*, 90 Ills.

DAM. See *Evidence; Lien.*

DAMAGES.

Suit for Personal Injuries—Mental Suffering.—On the trial of a suit for damages for the negligent shooting of plaintiff by defendant, the court charged the jury that they might take into consideration "a fair compensation for the physical *and mental* suffering caused by the injury." *Held*, that the effect of this instruction was no more than to allow the jury to give compensation for the personal suffering caused plaintiff by the injury and that in this there was no error: *McIntyre* v. *Giblin*, S. C. U. S., October Term 1879.

DEBTOR AND CREDITOR. See *Husband and Wife.*

DEED.

Construction—General Words following Specification of Particulars —Mortgage of Railroad.—The rule with regard to the effect of general words following the specification of particular articles in a conveyance, is, that if the object was to convey a limited interest the general words do not enlarge that interest, but if a general interest then they operate to include everything that falls within the general words used. It is simply applying the general rule that an instrument shall be construed according to the intention of the parties as gathered from it: *Raymond* v. *Clark*, 46 Conn.

A railroad company, empowered by its charter to issue bonds and secure them by a mortgage of its property to the treasurer of the state in trust for the bondholders, with power on the part of the trustee to take possession of and operate the road in default of payment, made such a mortgage, describing the property mortgaged as follows: "All and singular the railways, rails, bridges, station houses, depots, shops, buildings, tools, cars, engines, equipments, machinery, fuel, materials, privileges and property, real or personal, belonging or which may hereafter belong to the grantors, and be used as a part of said railroad or be appurtenant thereto or necessary for the construction, operation or security thereof; and also all the rights and franchises of said company, with the tolls, income, issues and profits thereof." *Held*, that a quantity of office furniture used in one of the offices of the company was covered by the mortgage; *Id.*

The defendants, with knowledge of the mortgage and of the fact that the railroad company had made default of payment of interest on its

bonds, attached the office furniture, removed it, and afterwards sold it on execution. The trustee, on the property being taken, made demand for it upon the officer, and afterwards brought an action of trover for it. The defendants denied the right of the trustee to the property, and the case was tried on its merits, and reserved, on a finding of the facts for the advice of this court. *Held*, that the court would not entertain the objection that the demand for the property should have been made on the defendants themselves and not on the officer: *Id.*

EQUITY. See *Covenant.*

Jurisdiction—Wager.—Courts of Chancery will assume jurisdiction to restrain the enforcement of unexecuted contracts founded on wagers or bets prohibited by law: *Petillon* v. *Hipple*, 90 Ills.

EVIDENCE. See *Contract.*

Dam—Tolls on Logs run through—Secondary Evidence of Amount of Logs.—In an action for tolls due upon logs run through plaintiff's dam, defendants having failed to produce upon due notice, the scale book of the logs cut at their camp, there was no error in admitting secondary proof of the contents of such book (by testimony of the person who kept it), together with evidence that all the logs so scaled were run through the dam: *Tewksbury* v. *Schulenberg*, 48 Wis.

Where defendant's agent, charged with cutting, hauling and getting out the logs, employed a person to keep another scale book, at the landing, and such book had been delivered to and retained by defendants, and they had made settlements for stampage in accordance therewith. *Held*, that testimony of their said agent as to its contents was properly admitted: *Id.*

Plaintiff was authorized by statute to maintain certain dams, with a proviso that they should not raise the water above a certain height; was required to build and maintain suitable slides and flood-gates for specified purposes, keep them in repair, and also keep them open at certain times; and when he should have completed "said dams as aforesaid," was to have power to collect tolls on logs, &c., passing over the slides or driven by the aid of the dams, as a compensation for maintaining such dams, with a proviso that he was at all times to comply with the provisions as to slides and flood-gates. *Held*, that upon showing that his dams were "in good repair," and "fit to run logs through," that the slides and gates were sufficient, and that defendants could not have run their logs through without the aid of such dams, he was entitled to recover the tolls without further proof on his part of compliance with the statute: *Id.*

FORMER ADJUDICATION.

Husband and Wife—Action against Common Carrier.—A judgment in an action of assumpsit brought by a husband and wife on a contract, by a carrier of passengers to carry the wife safely, for injuries to the wife while being carried, is a bar to another action of assumpsit on the same contract by the husband alone, to recover for the same injuries: *Pollard* v. *N. J. Railroad & Trans. Co.*, S. C. U. S., Oct. Term 1879.

A different rule prevails when the action is in tort against the carrier for a breach of his public duty, except, perhaps, in states like New Jer-

sey, where by statute the husband may in such an action add claims in his own right to those of his wife: *Id.*

GUARANTY.

Assignment of.—The plaintiff made a loan of $3000 to P., taking his note therefor endorsed by A. At the same time P. made his note to A. for the same sum, payable to A.'s order, with a guaranty of its payment by the defendants, this note and guaranty being intended as a security to A. for his endorsement. The note of P. to the plaintiff not being paid, and P. being bankrupt, A. endorsed and delivered the note held by him to the plaintiff and assigned to him the guaranty. *Held*, in a suit upon the guaranty, that the plaintiff was entitled to recover: *Stearns* v. *Bates*, 46 Conn.

HIGHWAY.

Defect in—Obstruction—Structure—Turnpike—Abandonment.—The statute (Gen. Stat. tit. 16, ch. 7, sect. 10), provides that when an injury on a highway is caused by a structure legally placed upon it by a railroad company, the company and not the party bound to keep the road in repair, shall be liable therefor. *Held*, that a moving train of cars was not a structure within the meaning of the statute: *Lee* v. *Town of Barkhampstead*, 46 Conn.

A declaration alleged that a certain highway was defective and unsafe, and that by reason thereof the horse of the plaintiff ran into and his carriage was dashed upon a large pile of rocks lying upon the highway and contiguous thereto and by means thereof were injured. *Held*, to be clearly sufficient after verdict and the court inclined to regard it as good on demurrer: *Id.*

The question whether, considering all the circumstances, a town had done all that could reasonably be required, to make a highway safe, and whether a pile of rocks by the side of the road was a defect of the highway, are questions of fact, the conclusions of the jury upon which cannot be reviewed by this court: *Id.*

The highway in question had formerly been a turnpike road. The turnpike company, four years before the injury, had ceased to repair it or to take tolls upon it, and the town had immediately after assumed the control of it and had ever since kept it in repair. The act in force at that time(Gen. Stat. of 1866, tit. 31, sect. 93), provided that where a turnpike company in such manner abandoned its road for one year, it should constitute an abandonment and forfeiture of its corporate rights and the road should become a public highway. *Held*, that no certificate or other act of the turnpike commissioners was necessary to make the abandonment complete: *Id.*

HUSBAND AND WIFE. See *Former Adjudication; Joint Debtors.*

Doing Business in Wife's Name—Fraud against Creditors.—Where an insolvent husband carries on business in his wife's name, claiming to be her agent at a salary, unless it is done in good faith and with the separate means of the wife, derived from some source other than the husband, the stock in trade and furniture are liable to be sold for his debts: *Robinson* v. *Brems*, 90 Ills.

INFANT. See *Surety*.

JOINT DEBTORS.

Husband and Wife—Judgment against one of Joint Debtors.—Judgment against one of several merely *joint* debtors is a bar to a subsequent action against the others, the debt being merged in the judgment: *Lauer* v. *Bandow*, 48 Wis.

In an action against husband and wife to enforce a mechanic's lien for the erection of a building on the wife's lot, a personal judgment was obtained against the husband alone, and a lien adjudged upon the wife's house and lot. After reversal of the latter part only of the judgment, the Circuit Court, on affidavits tending to show merely a joint liability of the wife with the husband, without vacating the personal judgment against the husband, permitted the complaint to be amended so as to allege the wife's personal liability and granted a new trial. *Held*, error: *Id.*

JUDGMENT.

For greater Amount than declared for—A judgment for a sum greater than the amount due upon the cause of action as stated in the record is erroneous; and the previous consent of the parties that such judgment might be rendered does not cure the error: *Rosebrough* v. *Ansley*, 35 Ohio St.

JUSTICE OF THE PEACE. See *Pleading*.

LANDLORD AND TENANT.

Liability to pay Rent—Abandonment.—If a tenant retains possession of leased premises, either actual or constructive, he will be liable for the rent so long as his possession continues, even though he may have good cause for abandoning the same before the expiration of the term, for the acts of the landlord, or omission of duty on his part. Before the tenant can defend against the payment of rent, he must abandon the premises. A retention of the keys of a rented building by the tenant is a constructive possession by him: *Burnham* v. *Martin*, 90 Ills.

LIEN.

Assignment of Claim Destroys Lien—Dam—Tolls for Logs Run through—Amendment.—The general rule is that in the absence of any statutory provision to the contrary, the assignment of a claim for which the assignor may have by law a specific lien, before action, destroys the right to the lien, and a reassignment to him does not revive the lien: *Tewksbury* v. *Bronson*, 48 Wis.

An action to enforce a lien given by statute for tolls on logs run through plaintiff's dam, is an action at law on contract: *Id.*

In such an action against X. and Y., the complaint alleging that X. owned the logs, and that Y. had some claim upon or interest in them, demanded a personal judgment against X. for the amount of the tolls, and that the same be declared a lien upon the logs. It appearing on the trial that Y. owned the logs, and the action being dismissed as to X., it was an abuse of discretion to refuse plaintiff permission to amend the complaint so as to demand a personal judgment against Y.: *Id.*

MERGER. See *Mortgage.*

MORTGAGE. See *Deed.*

Security for Note—Description of Note given for Security as an Absolute Debt.—A mortgage describing as an absolute indebtedness a note given as security for a contingent liability assumed by the mortgagee, is not good against a *bona fide* purchaser of the land without notice: *Stearns* v. *Porter*, 46 Conn.

Equity of Redemption—Execution against—Advancement—Waste—Merger.—R. mortgaged certain real estate, the equity of redemption in which was afterwards set off on an execution against him to a creditor, who conveyed the same to the wife of R. She afterwards died intestate. After her death R. remained in possession, and some time later was required to pay and did pay the mortgage-debt. Upon a bill for a foreclosure of the mortgage brought by the executor of R. against his children, who were also the children and heirs at law of R.'s wife, it was *held*, 1. That the payment of the mortgage-debt by R. put him in the place of the mortgagee. 2. That there was no presumption of law that the money paid was an advancement to his children, the question being one of intent. 3. That as the payment was an involuntary one, and he had made no charge or memorandum of it as an advancement, but had preserved the note and mortgage among his valuable papers, the conclusion at which the court below had arrived, that an advancement was not intended, was a reasonable one. 4. That although R., after paying the mortgage-debt, had the rights of a mortgagee, yet as he had also a life-estate as tenant by the curtesy, he was not chargeable with the rents and profits during the time that he held the property after such payment. 5. That as it was not for his interest that the life-estate should be extinguished, the law would not regard it as extinguished. 6. That if R. would have been liable for waste as tenant for life, yet he would not be so liable as mortgagee: *Hart* v. *Chase*, 46 Conn.

NEGLIGENCE. See *Damages.*

As between Master and Servant.—In an action by a servant against his employer, to recover damages for a personal injury caused by the use of defective machinery or materials employed in the business, the observance of due care and caution on the part of the servant is indispensable to his right to recover: *Pennsylvania Co.* v. *Lynch*, 90 Ills.

Collision with Team on Highway—Contributory Negligence matter for the Jury.—In an action against a railroad company for injuries received by plaintiff, from collision with a train, while driving his team and wagon across defendant's road, the court cannot say, as matter of law, that ordinary care required plaintiff to stop his team and listen for the train; or that trotting his team to within a rod of the track was negligence, even though he knew that the train usually passed the crossing at about that time in the day: but these questions are for the jury: *Eilert* v. *G. B. & Minn. Railroad Co.*, 48 Wis.

Evidence that, by reason of excavations, the formation of the land in the vicinity, and the presence of timber near the crossing, it was somewhat difficult for persons near it on the highway to see an approaching train, would support a finding by the jury that a failure to signal the approach

of the train (by bell or whistle) was negligence, although such signals were not then required by *statute: Id.*

Such a finding may be supported by mere *negative* testimony, notwithstanding positive testimony on defendant's part that signals were given: *Id.*

PLEADING. See *Judgment.*

In Justice's Court—Action for Loan of Chattels.—Complaint in justice's court, "that defendants are *indebted*," to plaintiff "in manner following: For a stove lent to defendants * * * of the value, &c., * * * which defendants have never returned to plaintiff, and refused to return when demanded." *Held*, an action *ex contractu;* and on proof (upon appeal to the Circuit Court) that the stove belonged to plaintiff and another person, as copartners, a nonsuit should have been granted: *Slutts* v. *Chaffee et al.*, 48 Wis.

RAILROAD. See *Deed; Negligence.*

REMOVAL OF CAUSES.

Conclusiveness of Proceedings before Removal.—The transfer of a suit from a state court to a Circuit Court does not vacate what had been done in the state court previous to removal: *Duncan* v. *Gegan*, S. C. U. S., Oct. Term 1879.

SALE.

Conditional Sale of Standing Timber.—By the terms of a written instrument, defendant sold T. & Co. all the merchantable pine standing on certain lands; T. & Co. were to place a certain mark on the end of each piece of timber cut, and to cause the timber to be manufactured into lumber and shingles, but were not to sell or otherwise dispose of any timber, or lumber manufactured therefrom, until the purchase-money should be paid; the rights of property in and possession of the timber and lumber were to remain in defendant until such payment: and he had full power to take possession and sell, on notice. *Held*, that the contract was either a conditional sale of personal property by defendant, or a chattel-mortgage to him, taking effect as the timber was cut; and in either case the filing of the instrument in the proper clerk's office, without recording it in the registry of deeds, was sufficient (under. ch. 113 of 1873, or Tay. Stats. 769, sect. 3), to protect defendant's rights against a subsequent purchaser from T. & Co.: *Id.*

Damages for non-delivery of Goods.—In order that the buyer may recover damages for the non-delivery of goods, it is incumbent on him to prove that he was ready and willing to receive and pay for them as delivered; and he is not relieved of this duty by the fact that the making of the contract sued on is denied: *Simmons* v. *Green*, 35 Ohio St.

SPECIFIC PERFORMANCE.

Time as of the Essence of Contract.—The petitioner and respondent, in October 1875, entered into a written contract by which the latter was to convey to the former a piece of land, with the wood standing thereon, on or before February 1st 1876, and the latter was to pay $700 at or

before the time of the delivery of the deed, with a right to cut the wood at any time, but not to carry it off until the money was paid. The petitioner failed to pay the money on or before February 1st 1876, but afterwards made payments from time to time, which the respondent received without objection, until February 1877, when there was only $10 remaining due. This sum the petitioner tendered to the respondent, but he refused to accept it. *Held*, on a bill for a specific performance—1. That time was not of the essence of the contract. 2. That if it was the respondent had waived it: *Lounsbury* v. *Beebe*, 46 Conn.

STATUTE.

Construction—Resort to Repealed Statute.—Where a statute still in force refers to one since repealed, the latter may be resorted to for the purpose of construing the former; as *ex gr.* notwithstanding the repeal of sect. 1210 a., Rev. Stat. 1878, the words of sect. 1210 b., "any of the causes mentioned in sect. 1210 a.," &c., are to be understood as if the enumeration of causes thus referred to were incorporated in sect. 1210 b.: *Flanders* v. *Town of Merrimack*, 48 Wis.

SURETY.

Infant—Chattel-Mortgage to Indemnify.—A surety upon an infant's notes for purchase-money of chattels, who has paid a judgment upon the notes, and received from the infant a note for the amount so paid, secured by mortgage of the same chattels, is entitled to hold the property as against a subsequent purchaser from the infant with knowledge of the mortgage: *Knaggs* v. *Green*, 48 Wis.

TENANT FOR LIFE. See *Mortgage*.

USURY.

Agreement to pay anything beyond the Legal Interest.—Where money is loaned at the highest rate of interest allowed by law, a contract to pay a sum in addition to such rate in consideration of an extension of the time of payment is usurious: *Rosebrough* v. *Ansley*, 35 Ohio St.

WASTE. See *Mortgage*.

WATERS AND WATERCOURSES.

Injury to Adjacent Owner.—Where a railway company turns its waste water from a tank, upon the premises of another, where it spreads and freezes, doing damage to the property of the owner, the company cannot claim exemption from liability on the ground that the freezing of the water was an act of nature, as such a result from its wrongful act might have been foreseen. To excuse from liability for an act of nature in combination with the defendant's own act, it must be such as could not have been foreseen and prevented by the exercise of ordinary care and prudence: *C. & N. W. Railway Co.* v. *Hoag*, 90 Ills.